IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4357 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BANSILAL CHUNILAL CHAVLA

Versus

STATE OF GUJARAT

Appearance:

M/S THAKKAR ASSOC. for Petitioner No. 1

Mr.A.Y. Kogje, Assistant GOVERNMENT PLEADER, for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

MS PJ DAVAWALA for Respondent No. 4

SERVED BY RPAD - (R) for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 24/06/2004

ORAL JUDGEMENT

By filing this petition, the petitioner has challenged his detention order dated 16.3.2004, by which he is detained under the provisions of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980 (in short, "PBM"). Along with the order of detention, he is also served with the grounds of detention.

In the grounds of detention, the activities of the petitioner are also highlighted, as he has tried to mix solvent in the petroleum products. After having been satisfied about the activities of the petitioner, ultimately, the detaining authority has passed the order of detention. The aforesaid order is impugned at the instance of the petitioner on various grounds.

Mr.Pahwa, learned Advocate for the petitioner, submitted that there is delay in passing the order since the occurrence of the last incident in question. He further submitted that even though the petitioner was already released on bail by the competent court in connection with two criminal cases, of which reference is made in the amended portion of the petition, no such copy of bail application, nor the order granting bail was taken into consideration by the detaining authority, because the sponsoring authority has not sent the said vital documents to the detaining authority.

Mr.Kogje, learned AGP, however, argued that, it is, no doubt, true that at the time when the detention order was passed, the petitioner was already released on bail. However, according to him, the sponsoring authority was not aware about granting of such bail. He submitted that, therefore, these documents were not placed before the detaining authority by the sponsoring authority.

Mr.Pahwa relied upon the decision of the Apex Court in M. Ahamedkutty v. Union of India and another, (1990) 2 SCC 1 in order to substantiate his say that the bail application and the order passed below such bail application are vital documents. Mr.Pahwa submitted that even while granting bail, the Magistrate has imposed strict conditions and one of the conditions is that the petitioner-accused shall not repeat such incident. He submitted that, therefore, if the material was placed before the detaining authority, the detaining authority might not have passed the detention order, because the bail order contained the conditions subject to which the petitioner was granted the bail and on committing breach of such conditions, even the bail can be cancelled. At

least, the conditions attached to the bail order were required to be taken into account by the detaining authority, but since the order was never placed before the detaining authority by the sponsoring authority, only on the limited ground of not placing the important document before the detaining authority, the petition is required to be allowed. In a given case, it may not be necessary to supply documents, but, in the instant case, since the Magistrate has imposed certain conditions at the time of releasing the petitioner on bail, it was necessary on the part of the Sponsoring Authority to place this material before the detaining authority. Mr.Kogje, learned AGP, however, submitted that even the Sponsoring Authority was not aware about such order, though he admits that such order was passed by the competent court, releasing the petitioner on bail. The petition is accordingly allowed on the ground that favourable material was not placed before the detaining authority and such material, in the facts and circumstances of the case, is a vital material, because some conditions were attached in the order passed by the Magistrate granting bail and on breach of such conditions, even the bail can be cancelled.

The petition is accordingly allowed. The order of detention is quashed and set aside. It is ordered that the detenu be released forthwith unless he is required in connection with any other case. The Rule is made absolute accordingly.

June 24, 2004 (P.B. Majmudar, J.)

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(apj)